

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 201 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 Yes

3 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

ARUNA MILLS LTD

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 10/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', has referred the following two questions, for our opinion, u/s 256(1) of the Income-tax Act, 1961, arising out of the order of the

Tribunal dated 29.10.1983, in relation to A.Y. 1981-82.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the amount of Rs. 41,879/- being the cash payment of H.R.A. to employees forms part of salary for the purpose of sec. 40A(5) of the Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in granting deduction of Rs. 1,05,692/- being the expenditure incurred on issue of bonus shares by following the decision in ITA No. 594/Ahd/82?"

2. We have heard the Learned Counsel appearing for the Revenue, whereas, none appeared for and on behalf of the respondent-assessee, though duly served.

3. Our attention was invited by the Learned Counsel for the Revenue to a decision of the Apex Court in C.I.T. v. Mafatlal Gangabhai & Co. P. Ltd., 219 ITR 644. The scope of sec. 40(a)(v) and sec. 40A(5) of the I.T. Act and also the provisions of sec. 40 and 40A, pertaining to the expenditure resulting in benefit, amenity or perquisite to employee, whether made in cash or not, have been extensively explored and succinctly propounded by the Hon'ble Supreme Court. The provisions of sec. 40A(5)(a)(ii) and sec. 40(a)(v) are similar in all material aspects except for certain structural changes. It is further held that sec. 40(a)(v) equally applies to the provisions of sec. 40A(5)(a)(ii). In this case, the Hon'ble Supreme Court disagreed with the opinion of the Kerala High Court in CIT v. Commonwealth Trust Ltd., 135 ITR 19. In the light of the clear facts and the aforesaid decision of the apex Court, we answer question No.1 in the affirmative, against the Revenue and in favour of the assessee.

4. Insofar as question No.2 is concerned, rightly, our attention was drawn to a decision rendered in Brooke Bond India Ltd. v. Commissioner of Income-tax, reported In 225 ITR 798, by the Hon'ble Supreme Court. Similar question was required to be decided in the said decision. Expenditure in connection with the additional issue of shares could be said to be directly relatable to expansion of capital base. It has been held that expenditure incurred by a company in connection with

issue of shares with a view to increase its share capital, is directly relatable to the expansion of the capital base of the company and, therefore, is capital expenditure, even though it may incidentally help in the business of a company and in the profit making process.

5. In the circumstances of the case, and the aforesaid directly applicable case law of the Hon'ble Supreme Court, we answer question No. 2 in negative, against the assessee and in favour of the Revenue. Therefore, this reference application shall stand accordingly disposed of without any order of costs.

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